

SURPRISING WIN FOR CALIFORNIA EMPLOYERS: CALIFORNIA SUPREME COURT LIMITS TYPES OF PENALTIES RECOVERABLE IN PAGA CASES

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An unexpected recent pro-employer decision from California's Supreme Court ruled that unpaid wage claims cannot be recovered by employees under the state's Private Attorneys General Act ("PAGA") because those wages are "not a civil penalty that a private citizen has authority to collect." *ZB, N.A., and Zions Bancorporation v. Superior Court of San Diego* (Cal. Sept. 12, 2019). The PAGA statute is a powerful tool because it offers financial incentives (\$50 or \$100 per violation) to private individuals to enforce state labor laws, which are typically reserved for the Labor Commissioner or Attorney General. Plaintiff's counsel bringing a PAGA claim can seek attorney's fees under the statute as well. Importantly, PAGA claims may not be waived and employees may not be compelled to arbitrate such claims. The Supreme Court's ruling dramatically reduces employers' PAGA exposure to only civil penalties and makes clear that there is no right for individual employee wage recovery under the PAGA umbrella. Thus, employees can still be required to arbitrate unpaid wage claims.

In *ZB, N.A., and Zions Bancorporation*, plaintiff Kalethia Lawson alleged that her employer, ZB, failed to provide overtime, minimum wages, and meal and rest periods. Her employment agreement required that she arbitrate all disputes with her employer. When she filed a PAGA claim, ZB moved to compel arbitration of her individual claims for unpaid wages, which was granted by the trial court. Defendants appealed a different portion of the decision, but the case wound its way to the High Court to resolve a split of authority over whether unpaid wages and the other non-fixed amounts were truly part of a civil penalty or constituted individual relief outside the scope of a PAGA action.

ZB argued before the Supreme Court that unpaid wages claims are subject to arbitration because PAGA covers only civil penalties, and unpaid wages fail to qualify as civil penalties since they are compensatory damages. Following an in-depth analysis of the Labor Code language and legislative history, the Court agreed, reasoning that the statute allowed recovery of only fixed penalties that are specified in the statute in certain amounts. Thus, PAGA does not cover unpaid wage claims unique to an employee because the statute encompasses only civil penalties. The Court further noted that the law authorizes only the "Labor Commissioner to issue a citation that includes both a civil penalty and the same unpaid wages." The Court recognized that plaintiffs may recover unpaid wages through civil actions or by filing Labor Commission claims rather than filing under PAGA.

This is a welcome development for all California employers. The potential exposure in PAGA cases – and pressure to settle because of that exposure – has greatly decreased. It also puts a much-needed end to employees' backdoor attempts to "recover" unpaid wages in PAGA actions while avoiding arbitration or the difficulties of pursuing a class action.

ADDITIONAL INFORMATION

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